Supreme Court of the United States

OCTOBER TERM, 1951.

No. 2.

EORGE STEFANELLI, JERRY MALANGA, JOSEPH MAGLIONE and FRANK D'INNOCENZIO,

Petitioners,

vs.

DUANE E. MINARD, JR., Prosecutor for Essex County, New Jersey, *et als.*,

Respondents.

ON WRIT FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONERS.

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Opinion Below.

There was no written opinion by the district court. The Opinion by the appeals court affirmed the district court (R. 32, 184 Fed. (2d) 575) viz.:

> The appeals in the instant cases are without merit. Every question here raised by the appellants can be asserted by them in the New Jersey State Courts and the way to the Supreme Court of the United States lies open. Federal Courts should not enjoin criminal proceedings in state courts save in exceptional cases to prevent irreparable injury which is clear and imminent. Douglas *v.* Jeanette, 319 U. S. 157. As to the application of the Fourth Amendment to the cases at bar see Wolf *vs.* Colorado, 338 U. S. 25. The judgments will be affirmed.

Jurisdiction.

The judgments of the United States Court of Appeals for the Third Circuit were entered on October 21st, 1950. The jurisdiction of this Honorable Court is invoked by virtue of Title 28 U. S. C. A. 1254 (1).

Questions Presented.

1. Whether the rights secured to the people by the Fourth Amendment to the Constitution of the United States are enforceable against State and local police officers, in State criminal proceedings, by means of equity proceedings in Federal Courts to enjoin and suppress the use of evidence obtained by unreasonable searches and seizures.

2. Whether the "Civil Rights Laws", Title 8 U. S. C. A. Section 43 and Title 28 U. S. C. A. Section 1343 (3) supply the remedy of enforcing basic and fundamental rights secured by the Constitution against local police incursion into privacy and run counter to the guarantees of the Fourth and Fourteenth Amendments.

3. Whether petitioners should be compelled, first, to attempt to enjoin or suppress the use of evidence in the State Courts of New Jersey, despite continuous holdings by all New Jersey appellate courts that evidence obtained as the result of an unlawful and unreasonable search and seizure is admissible in evidence, if evidential *per se*.

4. Whether the search and seizure in such circumstances is unconstitutional and in violation of due process of law.

Statutes Involved.

Title 8 U. S. C. A. Sec. 43:

Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceedings for redress.

Title 28 U. S. C. A. Section 1343:

(a) The District Courts shall have original Jurisdiction of any civil action authorized by law to be commenced by any person.

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

UNITED STATES CONSTITUTIONAL AMENDMENTS INVOLVED:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment: * * * nor shall any State deprive any person of life, liberty or property without due process of law; * * *

NEW JERSEY CONSTITUTIONAL ARTICLE INVOLVED:

Art. 1. Par 7: The right of the people to be secure in their persons, houses and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and things to be seized.

NEW JERSEY REVISED STATUTES:

2;135-3. Any person who shall habitually or otherwise, buy or sell what is commonly known as a pool, or any interest or share in any such pool, or shall make or take what is commonly known as a book, upon the running, pacing or trotting, either within or without this State, of any horse, mare or gelding, or shall conduct the practices commonly known as bookmaking or pool selling or shall keep a place to which persons may resort for engaging in any such practices or for betting upon the event of any horse race or other race or *contest*, either within or without this State, or for gambling in any form, or any person who shall aid, abet or assist in any such acts, shall be guilty of a misdemeanor, and punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the State prison for not less than one year nor more than five years.

Specification of Errors.

The Court of Appeals, erred:

1. In holding that the petitioners should first exhaust remedies in the New Jersey State Courts.

2. In refusing to find that petitioners' constitutional rights under the Fourth Amendment of the Constitution of the United States are basic and fundamental and enforceable by means of equity proceedings in the District Court, by authority of the "Civil Rights Laws" (Title 8 U. S. C. A., Section 43, and Title 28, U. S. C. A., Section 1343 (3)).

3. In refusing to find that unlawful and unreasonable searches and seizures by State and local police officers are in violation of basic and fundamental rights secured by the Fourth Amendment and Fourteenth Amendment, and, that such rights are in Pari Materia with *all* the rights, privileges and immunities, secured and guaranteed by the Constitution; and, are subject to injunctive relief and suppression of the use of the fruits of unlawful and unreasonable searches and seizures.

4. In refusing to find that irreparable injury would be caused to the petitioners by the use of such evidence at the trial in the State Courts against the petitioners is great and imminent.

5. In refusing to find that petitioners will be denied Due Process of Law by the use of such evidence by respondents in the trials in the State Courts.

6. In affirming the judgments of the District Court.

Statement of Facts.

Petitioner, Stefanelli, together with his family resided on the first floor of premises No. 88 Tremont Avenue, East Orange, New Jersey. In the afternoon of December 6th, 1949, county and city detectives broke into his home through a kitchen door, and gained entrance to the apart-

ment rooms without his consent and approval, made a search therein, and seized papers, paraphernalia and things which pertained to the wagering on race horses (R. 6 and 7). The police officers had neither a warrant for petitioner's arrest nor a search warrant authorizing the search and seizure complained of, at the time of the entry. Petitioner, *after* the search and seizure and from the fruits thereof was placed under arrest and on the following day formally charged before a local magistrate with the crime of bookmaking in violation of New Jersey Statutes (R. 12).

Petitioner was indicted by the Essex County Grand Jury for this alleged crime, and, promptly filed a verified bill of complaint in the United States District Court for the District of New Jersey, seeking to enjoin the respondents from using the property unlawfully seized at any trial or hearing by virtue of and authority of the "Civil Rights Laws", Title 8, U. S. C. A., Sec. 43, and Title 28, U. S. C. A., 1343 (3) and claiming a violation and deprivation of his constitutional rights secured under the Constitution of the United States (R. 15 to 20). The relief sought was merely to enjoin and suppress the use of the evidence unlawfully obtained; that irreparable injury which was imminent and clear would be caused him by the use of said evidence, and not to enjoin the respondents from prosecuting petitioner.

Petitioners, Malanga, Maglione, and D'Innocenzio, occupied the third floor attic rooms of premises No. 201 North 13th Street, Newark, New Jersey. In the afternoon of April 15th, 1950, police officers of the City of Newark, New Jersey, broke down the door of one said rooms and gained entry without consent and approval of petitioners (R. 19 and 20). The police officers, without a warrant for the arrest of the petitioners, or any one of them, and without a search warrant, searched the rooms and seized therein

papers, paraphernalia and things which pertained to the wagering on race horses. Petitioners, *after* the search and seizure and from the fruits thereof were placed under arrest and on the following day were charged before a local magistrate with the crime of bookmaking in violation of New Jersey Statutes (R. 25). Petitioners thereafter filed a verified bill of complaint in the United States District Court for the District of New Jersey, seeking to enjoin the respondents from using the property unlawfully seized at any trial or hearing by virtue and authority of the "Civil Rights Laws", Title 8, U. S. C. A., Section 43, and Title 28, U. S. C. A., Section 1343 (3) (R. 2 to 7) and claiming a violation *and deprivation* of their constitutional rights secured under the Constitution of the United States. The relief sought was merely to enjoin and suppress the use of the evidence unlawfully obtained; that irreparable injury which was imminent and clear would be caused them by use of said evidence; and not to enjoin the respondents from prosecuting petitioners.

Petitioners entered into an Agreed Statement of Facts (Stefanelli, R. 11 and 12; Malanga, *et als.*, R. 24 and 25) wherein it was essentially stipulated that (1) respondents did not have a warrant for the arrest of petitioners, (2) respondents had no search warrant for the search of the petitioners' respective premises and to make a seizure therein; (3) that entry to petitioners' respective premises was made without their respective consents; (4) that *after* such entry by the respondent police officers, petitioners made no resistance to the search and seizure; (5) that papers, paraphernalia and other things, the property of petitioners pertaining to the wagering and booking of bets on horses in violation of New Jersey Revised Statutes 2:135-3, relating to the crime of bookmaking were seized by said officers; (6) that the matters and things taken by said police are

evidential per se, and therefore admissible in evidence under the laws of the State of New Jersey for the crime of bookmaking; (7) that petitioners were arrested on the occasion of the aforesaid seizures and on the following day arraigned before a local magistrate and charged with the crime of bookmaking, and at the time of arraignment warrants issued for their arrest; (8) that the fruits of the searches and seizures *will be used* by respondents at the trials of the petitioners for the crime of bookmaking; (9) that all of petitioners pleaded not guilty to the charges and (10) petitioners took no proceedings in the New Jersey Courts to suppress the seized evidence.

Because of the foregoing Agreement of Facts, no testimony was taken by the District Court on the motions made by respondents to dismiss the proceedings. The motions to dismiss were on the following grounds: (1) that the complaints failed to state a claim against respondents, and (2) that the District Court lacked jurisdiction (Stefanelli, R. 8, 9; Malanga, *et als.*, R. 22).

The District Court dismissed the petitioners' respective suits in equity upon the ground that petitioners should first exhaust their remedies under State law (Stefanelli, R. 9, 10 and Malanga, *et als.*, R. 22, 23).

The learned Court of Appeals for the Third Circuit, affirmed the District Court, but recognized the authority of Federal Courts to enjoin criminal proceedings where *irreparable injury was clear and imminent;* but, followed *Wolf* vs. *Colorado,* 338 U. S. 25, in holding that the Fourth Amendment did not apply to the cases at bar (R. 32).

Summary of Argument.

Local police officers, without any apparent restraint, have made searches and seizures of property and used the evidence seized in State criminal proceedings just so long

as the evidence seized was *evidential per se*. The highest appellate courts in New Jersey have sanctioned the means by which police officers secure evidence just as long as the property seized is evidential *per se*. The constitutional privileges and immunities guaranteed to the people by the Fourth and Fourteenth Amendments of the Constitution of the United States afford no protection whatsoever in State prosecutions to the people against the incursions complained of here. This Honorable Court has consistently condemned any such conduct by federal officers in most stern and effective language. Yet, local police officers are permitted to do the opposite of what is so strongly preserved by the immunities guaranteed to all of the people by our Federal Constitution.

Our Federal statutes, Title 8 U. S. C. A. 43 and Title 28 U. S. C. A. 1343 (3), commonly called "Civil Rights Laws", expressly provide the ways and means to protect rights, privileges and immunities guaranteed by the constitution to all the people, and provides for equal rights to all citizens and persons. These statutes grant unto District Courts *original* jurisdiction to redress the rights, privileges, and immunities secured by the Constitution, by action at law, suit in equity, or other property proceedings for redress.

Petitioners, by their respective suits in equity, and by authority of the aforesaid "Civil Rights Laws", sought to enjoin the respondents from the use of the evidence unreasonably obtained and suppress the use of the same at the trial of the State criminal charges pending against them for bookmaking (R. 5 and 18).

Petitioners did not seek to enjoin respondents from any prosecution by respondents of the pending criminal charges.

The appeals of Stefanelli and Malanga, *et als.*, were consolidated by Order of the Court of Appeals (R. 30) resulting in one opinion for both appeals. Stefanelli and Malanga,

et als., by virtue of the consolidation jointly petitioned this Honorable Court for a writ of certiorari, Case No. 458, October 1950 Term and the same was granted on May 14th, 1951 (R. 35). The facts, issues and questions involved being common in both cases and logically and reasonably could be heard and argued together.

Petitioners admit that the evidence seized from their respective premises is evidential *per se* under New Jersey law (R. 12 and 25). Respondents admit (1) that the respective premises of the petitioners were entered without their consents (R. 11 and 25); (2) that the police officers did not have a warrant for their arrest; (3) or a search warrant to make any seizure (R. 11 and 24) and (4) that the fruits of the searches and seizures will be used in evidence at the trials of petitioners for violations of New Jersey Revised Statutes 2:135-3, relating to the crime of bookmaking (R. 11 and 25).

The case of Stefanelli is separate and distinct from Malanga, *et als.*; are not related to each other, except as to the questions here involved being common to both.

ARGUMENT.

The rights secured to the people by the Fourth Amendment are enforceable against local and State police officers by equity proceedings in Federal courts.

Petitioners, by authority of Title 8 U. S. C. A. Section 43, which provides:

> "Civil Action for Depreviation of Rights.
>
> Every person, who, under color of any statute ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within

> the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of suit, suit in equity or other proper proceedings for redress.

and by authority of Title 28 U. S. C. A. Section 1343, which provides:

> (a) The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

filed verified bills of complaint in the District Court, charging, among other things, that their constitutional rights were violated by the respondents. The complaints further charged that the respondent police officers under the color of their office as police officers broke into and entered their respective premises, without their consents and approval and acquiescence made a search and seized papers, paraphernalia, and other things, pertaining to the wagering and booking of horses, being their property, allegedly in violation of the New Jersey Statutes relating to the crime of bookmaking. Further, the complaints charged that it was the intent of the respondents to use the aforesaid fruits of the search as evidence in the criminal charges made against petitioners for bookmaking. And further, that unless the fruits of the unlawful search and seizure were suppressed and returned to petitioners that they would be

caused irreparable harm and injury and that petitioners had no adequate remedy in the State Courts of New Jersey (Stefanelli, R. 3, 4; Malanga, *et al.*, R. 16, 17).

The relief sought by the respective petitioners was a restraint and injunction against respondents from using as evidence against them the fruits of the unreasonable search and seizure, together with all leads and information therefrom, at any trial or hearing intended to be prosecuted by respondents against the petitioners. They also prayed that the property taken and seized from the petitioners be returned and the use thereof, as evidence, be suppressed at any trial or hearing prosecuted by respondents in the State Courts of New Jersey (Stefanelli, R. 5; Malanga, *et al.*, R. 18, 19).

The respondents named in the complaints were local and county police officers, excepting Duane E. Minard, Jr., who as County Prosecutor was charged with the duty of prosecuting petitioners upon the evidence obtained by the other respondents.

All parties to the equity proceedings are citizens of the United States of America, and residents of the State of New Jersey. They are all within the jurisdiction of the United States District Court for the District of New Jersey, wherein the instant proceedings were instituted. The respondents by color of law and the authority vested in them by law, custom and usage committed the acts complained of by petitioners, *U. S.* v. *Classic*, 313 U. S. 299, 326; *Screws* vs. *U. S.* 325 U. S. 91, 107, 108; *Williams* vs. *U. S.*, Case No. 325, October Term, 1950, decided by this Honorable Court on April 23rd, 1951.

Independent suits in equity to suppress evidence have been successfully brought against federal officials by individuals from whom evidence was illegally obtained, *Perl-*

man vs. *U. S.*, 247 U. S. 7; *Burdeau* vs. *McDowell*, 256 U. S. 465.

The right to enjoin State officers from violating basic and fundamental constitutional rights has been approved in equity proceedings wherein vested rights under the First Amendment were involved, *Hague* vs. *C. I. O.*, 307 U. S. 496; *Douglas* vs. *Jeannette*, 319 U. S. 157. The proceedings in these cases were instituted by authority of the federal statutes relied upon by petitioners and the history of these statutes has been extensively reviewed in *Jeannette* and *Hague*, so that a repetition thereof would be superfluous.

In *Douglas* vs. *Jeannette, supra*, this Honorable Court held that federal courts should not enjoin a criminal proceeding save in exceptional cases to prevent irreparable injury which is clear and imminent. The petitioners in this case sought to enjoin threatened proceedings by the municipality and the relief was denied because there was no showing that the danger was of irreparable injury which was clear and imminent. The allegations of the petitioners against the municipality were that certain of petitioners and other Jehovah's Witnesses had been prosecuted for distributing literature without a license as prescribed by ordinance and that the municipality had *threatened* to enforce the ordinance against petitioners and other Jehovah's Witnesses. In this case the constitutional right under the First Amendment to the United States Constitution was claimed to have been violated.

But, the situation with petitioners at bar is entirely different than in *Jeannette, supra*. Respondents admit that the fruits of the searches and seizures *will be used* in the prosecution of the bookmaking charges now pending against petitioners upon indictments secured for the purpose (R. 12, 25). The danger by the use of the fruits of these seiz-

ures is imminent and clear, and, if not for this pending certiorari, petitioners would have long since been put to trial. If the evidence is not suppressed and the respondents enjoined from its use, irreparable injury could result to petitioners, because of the conceded fact that under the law of the State of New Jersey, the evidence which was seized, is in fact evidential *per se* (R. 12 and 25). The very purpose and object of seeking suppression of evidence in cases of federal origin was to eliminate the unlawfully seized evidence from consideration, because its use was not only a violation of the Fourth Amendment, but, likewise a violation of the Fifth Amendment, which is the privilege against self incrimination, *Gouled* vs. *U. S.*, 255 U. S. 298; *Agnello* vs. *U. S.*, 269 U. S. 20; *U. S.* vs. *Lefkowitz*, 285 U. S. 452, and many others.

Search and Seizure Law in New Jersey.

The Appellate Courts in New Jersey have repeatedly ruled upon claims of unlawful searches and seizures in state cases. The leading New Jersey cases which we hereafter cite are urged to sustain our contention that petitioners have no adequate remedy in New Jersey Courts and that only the federal courts can grant the relief which appellants seek.

The respondent police officers acted in accordance with "use and custom" as permitted by decisions in the highest state courts of New Jersey, that "papers unlawfully procured by an unreasonable search and seizure are admissible in evidence, if evidential *per se*", *State* vs. *MacQueen*, 69 New Jersey Law 522 (Supreme Court); *State* vs. *Lyons*, 99 New Jersey Law 301 (Court of Errors and Appeals); *State* vs. *Pinsky*, 6 N. J. Super. 90 (decided January 4th, 1950), which follows and approves the *MacQueen* case and

in which the following finding appears (*State* vs. *MacQueen*, *supra*), viz:

> (At page 527): "This exception has been discussed by counsel for the plaintiffs in error as if it raised some question of a violation of rights secured by the fourth and fifth amendments of the federal constitution; the former which prohibits 'unreasonable searches and seizures', and the latter declares among other things, that no person shall be compelled in any criminal case, to be a witness against himself. The case of Boyd *vs.* U. S., 116 U. S. 616, is cited as an authority. It is, however, established that the first ten amendments of the Constitution of the United States are limited to the sphere of the federal government, its courts and officers, and constitutes no prohibition upon the states. Barron *vs.* Baltimore, 7 Pet. 243; Smith *vs.* State of Maryland, 18 Howard 71, 76; Spies *vs.* Illinois, 123, U. S. 131, 166. This prohibition against unreasonable searches and seizures is embodied in the Constitution of the State, Art. 1, par. 6".
>
> (At page 528): "As to the mode in which the document now in question was obtained, it is very generally held *that papers unlawfully procured, even by means of an unjustifiable search and seizure are nevertheless admissible, if evidential per se.* Greenleaf Evid., Sec. 254A, etc. * * *" (Italics supplied).

And, the New Jersey Court of Errors and Appeals, in *State* vs. *Giberson*, 99 New Jersey Law 85, held:

> (At page 87): "The contention on behalf of the defendant is that all of the personal property mentioned in the petition should have been returned to her, because taken from her by unreasonable search and seizure in violation of the Constitution of the United States and of this State. The answer is, *that the provisions of the Constitution of the United States in this regard are limitations, upon federal*

> *but not State powers.* Spies *vs.* Illinois, 123 U. S. 131; Brown *vs.* New Jersey, 175 U. S. 172 and other cases. And our constitution Art. 1. Section 6, secures persons and property against unreasonable searches and seizure * * *".

The New Jersey Constitution, Art. 1, Par. 7, is the same as the old constitutional provision existing when the foregoing cases were decided, viz:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and things to be seized."

It is clear that the highest New Jersey appellate courts have considered the federal constitutional amendments *as well* as the state constitutional provisions pertaining to unreasonable searches and seizures, and have consistently held that "papers unlawfully procured, even by means of an unjustifiable search and seizure are nevertheless admissible, if evidential *per se.*" Any attempt by petitioners to seek the desired relief and protection of the Federal and State provision as to unreasonable searches and seizures appears futile.

Faced with this situation, the petitioners could not succeed in having the fruits of the unlawful and unreasonable searches and seizures suppressed by any proceeding in the State Courts of New Jersey. If application were to be made to the trial court by petition, or, during the course of the trials on the charges of Bookmaking, the trial court would be bound by the prior rulings in *MacQueen, Lyons, Giberson* and *Pinsky* cases, *supra.*

There is no adequate remedy in the New Jersey Courts.

If the petitioners were compelled to exhaust their rights in the State Courts for the same relief which they seek in the Federal Court, irreparable damage will have been caused them. We know of no way of convincing the trial court, or the appellate courts that the New Jersey rule "that papers *unlawfully* procured by an *unreasonable* search and seizure are admissible in evidence, if evidential *per se*", is bad law. Apparently, all Constitutional arguments have been exhausted in State Courts. As a consequence the property of the petitioners will be admitted in evidence against them and being concededly "evidential *per se*" would result in irreparable injury to the petitioners.

The punishment required to be imposed upon those convicted of Bookmaking in violation of New Jersey Revised Statutes 2:135-3, is *mandatory*. Imprisonment of not less than 1 year or more than 5 years, or a fine of not less than $1,000.00 or more than $5,000.00 may be imposed (Brief, p. 4). It is common knowledge that in Essex County, New Jersey, excepting in very few rare cases, upon conviction for Bookmaking, all have been imprisoned for the minimum prison term, at least.

If petitioners were to appeal from a conviction to the Supreme Court of New Jersey, the only forseeable ground of appeal is the question of unreasonable search and seizure, and as we have already pointed out, the law of which has been definitely established,—that cumulative argument would merit no consideration. Petitioners could only be admitted to bail, pending appeal, *if* the trial court or appellate court finds that there is a "reasonable doubt as to the legality of the judgment of conviction". The state of the law in New Jersey being as it is, petitioners would languish

in jail pending determination of the appeals in the State Court. By the time the procedures directed by the learned Third Circuit would be exhausted, the questions here raised would become moot, insofar as they would apply to petitioners.

The learned appeals court in the decision at bar, however, held "Federal Courts should not enjoin criminal proceedings in state courts save in exceptional cases to prevent irreparable injury which is clear and imminent" (R. 32).

The irreparable injury and harm to petitioners, is clear and imminent. Petitioners have been indicted by a grand jury for the crime of bookmaking. Respondents will use the fruits of their unreasonable search and seizure against petitioners (R. 12 and 25). *These facts are conceded by them in clear, convincing and unequivocal language. The use of the evidence is not "threatened" as was the situation in Douglas* vs. *Jeanette, supra.*

The admitted facts at bar show convincingly the extraordinary circumstances involved, (1) the fact that the seized evidence is concededly evidential *per se* under New Jersey law, (2) that the evidence was obtained by breaking into petitioners' premises without a warrant for the arrest of petitioners or a warrant to make a search of and seizure in their premises, (3) that under the New Jersey law as determined by the highest appellate courts that "papers unlawfully procured by an unreasonable search and seizure are admissible in evidence, if evidential *per se*", (4) that the fruits of the search *will* be used against petitioners, *all* spell out a clear and convincing danger which is immediate. If respondents did not intend to use the evidence, there possibly would have been no indictment. Having obtained an indictment, respondents' clear purpose is to seek a conviction and punishment of the petitioners as provided by law.

It is our system of government to *not* prolong or provoke litigation endlessly. It is not only costly but "justice delayed is justice denied". The problem of exhausting State remedies in most types of cases has adequately been determined by the United States Supreme Court. Most all the proceedings have resolved themselves particularly in *habeas corpus* cases. In this type of case the relief sought was the discharge of the moving party.

But in the cases, at bar, the situation is entirely different. We are seeking relief and the security guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution, and the remedies enacted by Congress, for the purpose, by means of the "Civil Rights Laws", *supra*, which give federal courts original jurisdiction to grant the relief prayed for.

It cannot be denied that the petitioners have fundamental and basic rights under the Fourth Amendment and which rights are not necessary of repetition.

In *Fenner* vs. *Boykin*, 271 U. S. 240, the Supreme Court held:

> "When absolutely necessary for protection of constitutional rights, courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done excepting under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this should be done. The accused should first set up and rely upon his defense in State courts even though this involves a challenge of the validity of some statute, *unless it plainly appears that this course would not involve adequate protection.*" *Ex Parte* Young, 209 U. S.

123; Terrace *vs.* Thompson, 263 U. S. 418; Frink Dairy Co. *vs.* U. S., 274 U. S. 455.

In *Brown* vs. *New Jersey*, 175 U. S. 172, at page 175, the United States Supreme Court held:

> "The State has full control over the procedure in its courts, both in civil and criminal cases, *subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution. Ex Parte* Reggel, 114 U. S. 642; Chicago *vs.* Chicago, 166 U. S. 226." (Italics supplied.)

In *Douglas* vs. *Jeanette*, 319 U. S. 157, our Supreme Court held:

> (At pages 163, 164): "* * * Where the threatened prosecution is by state officers for alleged violations of state law, the state courts are the final arbiters of its meaning and application, subject only to review but this court on federal grounds appropriately asserted. Hence the arrest by federal courts of the processes of the criminal law within the states, and the determination of criminal liability under state law by a federal court of equity, are to be supported only on a showing of irreparable injury 'both great and immediate.' Spielman Motor Sales Co. *vs.* Dodge, 295 U. S. 89, 95, 79 Law Ed. 1322, 1325, 55 Sup. Ct. 678, and cases cited; Watson *vs.* Buck, 313 U. S. 45, 49, 85 Law Ed. 577, 579, 61 Sup. Ct. 418; and cases cited; Williams *vs.* Miller, 317 U. S. 599, *ante*, 489, 63 Sup. Ct. 258."

In *Beal* vs. *Missouri P. R. Co.*, 312 U. S. 45, our Supreme Court held:

> "The issuance of injunctive relief by Federal Courts against the enforcement of state criminal statutes can be justified only in most exceptional cir-

cumstances, and upon a clear showing that an injunction is necessary in order to prevent an irreparable injury."

In *Carter* vs. *Illinois*, 329 U. S. 173, our Supreme Court held:

"The due process clause of the Fourteenth Amendment does not operate to enforce upon the states a uniform code of criminal procedure; and it is for them to choose the methods and practices by which crime is brought to book, so long as they observe those ultimate dignities of man which the United States Constitution assures."

In *Snyder* vs. *Mass.*, 291 U. S. 97, our Supreme Court held:

(At page 105): "* * * The Commonwealth of Massachusetts is free to regulate the procedure of its Courts in accordance with its own conception of policy and fairness, *unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.* Twining *vs.* New Jersey, 211 N. S. 78; Rogers *vs.* Peck, 199 U. S. 425; Maxwell *vs.* Dow, 170 U. S. 581; Hustado *vs.* California, 110 U. S. 516; Frank *vs.* Mangum, 237 U. S. 309; Powell *vs.* Alabama, 287 U. S. 45; Brown *vs.* Mississippi, 297 U. S. 278" (Italics supplied).

Chambers vs. *Florida*, 309 U. S. 227, our Supreme Court held:

"The due process provisions of the Fourteenth Amendment was intended to guarantee procedural standards adequate and appropriate then and thereafter to protect at all times persons charged with or suspected of crime by holding positions of power and authority."

In accordance with the principle enunciated in *Fenner* vs. *Boykin*, 271 U. S. 240, *the interference by federal courts with local police officers shall be done only where it plainly appears that proceedings in the State Court does not involve adequate protection, Ex Parte Young*, 209 U. S. 123; *Terrace* vs. *Thompson*, 263 U. S. 418; *Frink Dairy Co.* vs. *U. S.*, 274 U. S. 453. *Our analysis of the New Jersey law, plainly emphasizes that petitioners at bar have no adequate protection by any proceedings by them in the State Courts of New Jersey.*

The principle of law established by this Honorable Court in *Carter* vs. *Illinois*, 329 U. S. 173, clearly emphasizes that the Fourteenth Amendment does not operate to enforce upon states a uniform code of criminal procedure and how crimes are brought to book, "so long as they observe those dignities of man which the United States Constitution assures". The Fourth Amendment of the Constitution is basically involved in petitioners' claims and its requirements have been violated by the police respondents at bar; and, we will further argue its application to the States by means of the Fourteenth Amendment. The New Jersey Courts, by reason of the cases we have cited, *supra*, will not compel respondents to "observe those dignities of man which the United States Constitution assures".

The principle established in *Snyder* vs. *Mass.*, 291 U. S. 97, . . . a state is free to regulate the procedure of its courts within its own conception of fairness, *but* in doing so it shall not offend some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. The guaranty to the people under the Fourth Amendment against unreasonable searches and seizures, have been declared by this Honorable Court to be "basic, fundamental and implicit in the concept of ordered liberty", *Wolf* vs. *Colorado*, 338 U. S. 25, 27. The conduct

of the police respondents at bar "offended some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental", hence the local police, the respondents at bar, have violated every concept of the constitutional rights, privileges and immunities, and permittedly so, because of the long standing decisions in New Jersey sanctioning such incursions of privacy, so strongly condemned by this Honorable Court in *Wolf* vs. *Colorado, supra,* and *MacDonald* vs. *U. S.,* 335 U. S. 451.

There can, therefore, be no adequate remedy to petitioners in the New Jersey Courts, and resort to the federal courts by the equity proceedings as here instituted by them, is their only protection to secure the rights, privileges and immunities guaranteed them by the Constitution and invoked through the *Civil Rights Laws, supra.*

Although repetitious, we respectfully revert back to the language of Title 8, U. S. C. A., Section 43, viz.: *every person who . . . of any State causes to be subjected any citizen of the United States or other person . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity or other proceeding for redress.*

Title 28, U. S. C. A., Section 1343, not only gives *original* jurisdiction to district courts for redress, but says . . . *to redress the deprivation . . . of any right, privilege or immunity security by the Constitution or by any Act of Congress providing for* EQUAL *rights of citizens or of all persons within the jurisdiction of the United States.*

It is to be especially noted, that the statutes in question make no distinctions between citizens of the United States and of a State, that United States citizenship is not an essential for giving the District Court jurisdiction, but EQUALITY to all in preserving Constitutional rights. *These statutes clearly and unmistakably include each and every*

part of the Constitution, without reservation or exception.

The charged and conceded facts applying to the petitioners at bar, if a federal case *ab initio*, make out a clear and convincing case, where the federal courts, without hesitation, would order a suppression of the evidence and enjoin the individuals from its use at any trial or hearing.

ARE NOT LOCAL POLICE OFFICERS IMMUNE TO THE CONSTITUTIONAL RIGHTS SECURED THE PEOPLE FURTHER PROTECTED BY THE "CIVIL RIGHTS LAWS."?

The *Wolf* Case.

Respondents will rely upon *Wolf* vs. *Colorado*, 335 U. S. 25, as authority that petitioners' claims should be denied. The learned District Court dismissed the suits in equity because petitioners had not exhausted their remedies under state law (R. 9, 10 and 22, 23). The United States Court of Appeals for the Third Circuit affirmed this decision and held that petitioners should exhaust their remedies in the New Jersey State Courts and "the way to the Supreme Court of the United States lies open"; and further affirmed upon authority of *Wolf* vs. *Colorado, supra* (R. 32). However, the appellate court cited *Douglas* vs. *Jeanette*, 319 U. S. 157, for the proposition that federal courts should not enjoin criminal proceedings in state courts, save in exceptional cases to prevent irreparable injury which is imminent and clear.

Seemingly, we cannot reconcile the opinion of the appellate court in the case at bar. The facts in the *Wolf* case were not as clear cut, insofar as the search and seizure were concerned as those facts relating to the petitioners at bar. A reading of the respondent's Brief, in *Colorado* vs. *Wolf*, is most convincing that the illegality of the search and seizure was seriously disputed. Respondents contended

that the search and seizure of the Wolf records was lawful and incident to a lawful arrest. The records were in open view in Dr. Wolf's office and were taken by the police after they had gone to his office to arrest him on a charge of abortion committed by the doctor upon a woman who had accused Dr. Wolf of having committed the act upon her.

In the situation at bar, respondents concede that they entered the premises of petitioners without consent or approval, had no search warrant or warrant for the arrest of petitioners, that the evidence seized was evidential *per se* under New Jersey law and would be used at the trials of petitioners to sustain the criminal charges for bookmaking. In the *Wolf* case, the record shows that the case was tried and that the prosecution offered evidence to convict, *in addition*, to the alleged "unlawfully seized" records. Wolf asked this Honorable Court for a *reversal of his conviction on constitutional grounds*, which we shall now take up. But, before doing so, may we reiterate, the petitioners, Stefanelli, Malanga, Maglione and D'Innocenzio, *seek only to suppress the evidence unlawfully and unreasonably taken from them. They do not seek to enjoin the respondents from prosecuting them upon the indictments* now pending against them in the New Jersey Courts, and which arise from their arrests *after* the unlawful searches and seizures of which they complain in these proceedings.

In *Wolf* vs. *Colorado*, 338 U. S. 25, this Honorable Court considered the following question:

> Does a conviction by a State court for a State offense deny the "due process of law" required by the Fourteenth Amendment, solely because evidence that was admitted at the trial was obtained by circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there deemed to be an infrac-

tion of the Fourth Amendment as applied in Weeks *vs.* United States, 232 U. S. 383. . . .

This question was answered, thusly:

(p. 33) We hold, therefore, that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure. . . .

It would appear from the above quotations that the questions here raised are settled. But, the following language in the *Wolf* case, makes it clear that some remedy is available, viz:

(p. 27, etc.) The security of one's privacy against arbitrary intrusion by the police—which is the core of the Fourth Amendment—is basic to a free society. *It is therefore implicit in the concept of ordered liberty and as such enforceable against the States through the Due Process Clause.* The knock at the door whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking peoples. (Italics supplied.)

(p. 28) *Accordingly, we have no hesitation in saying that were a State to affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment.* But the ways of enforcing such a basic right raises questions of a different order. How such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude varying solutions which spring from an allowable range of judgment

> on issues not susceptible of quantitive solution. (Italics supplied.)

Further, this Honorable held:

> (p. 33) . . . And though we have interpreted the Fourth Amendment to forbid the admission of such evidence, a different question would be presented if Congress under its legislative powers were to pass a statute purporting to negate the Weeks doctrine. We would then be faced with the problem of the respect to be accorded the legislative judgment on an issue as to which, in default of that judgment we have been forced to depend upon our own. Problems of a converse character, also not before us, would be presented should Congress under section 5 of the Fourteenth Amendment undertake to enforce the rights there guaranteed by attempting to make the Weeks doctrine binding upon the States.

Wolf *sought a reversal* of the conviction upon the ground that unreasonably seized evidence was admitted in evidence, over objection, and that his constitutional rights secured by the Fourth Amendment were violated and he was therefore denied due process. It appears from the opinion in this case that Colorado has a constitutional provision against unreasonable searches and seizures. The question to be decided on the certiorari, if favorable to Wolf, and from the purport of the question, the conviction would have been reversed.

However, the position of the petitioners at bar seek no restraint against any prosecution for the crimes for which they have been indicted and await trial. Petitioners merely seek the suppression of the evidence which admittedly unlawfully and unreasonably taken. Such other evidence which the respondents may have to sustain the indictments is not the subject of these proceedings, and the

respondents would not be "hampered" because of and by the granting of the relief which petitioners here seek.

In the *Wolf* case, this Honorable Court, found that the unlawful search and seizure denied Wolf due process, but the use of the evidence did not. A study of this opinion suggests to us, that the mode of procedure by Wolf was perhaps inadequate.

In New Jersey, the courts have affirmatively sanctioned "police incursions into privacy", and unanimously have held "that papers unlawfully procured by an unreasonable search and seizure are admissible in evidence, if evidential *per se*", *State* vs. *MacQueen*, 69 N. J. Law 522; *State* vs. *Lyons*, 99 N. J. Law 301; *State* vs. *Giberson*, 99 N. J. Law 85, *State* vs. *Pinsky*, 6 N. J. Super. 90, decided January 4th, 1950. In *State* vs. *Giberson*, the Court held that the Fourth Amendment to the Constitution of the United States, and Article 1, Section 6 (now Article 1, Par. 7, of the new Constitution) of the New Jersey Constitution are of no protection against unreasonable searches and seizures. Furthermore, in *State* vs. *MacQueen*, *supra*, and *State* vs. *Giberson*, *supra*, the court held that the first ten amendments to the Constitution of the United States are limited to the sphere of the federal government and no prohibition upon the states. Any attempt by petitioners to seek any remedy in the State Courts of New Jersey, would be thwarted by virtue of the foregoing decisions.

Therefore, there is an affirmative sanction by the New Jersey courts of the police incursions complained of by petitioners and runs counter to the guaranty of the Fourteenth Amendment, Wolf vs. *Colorado, supra.*

Perhaps, it may be argued by respondents, that by reason of comity, federal courts should not intervene in State criminal prosecutions. But, "rules of comity or convenience must give way to constitutional rights", *Oklahoma Natural*

Gas vs. *Russell*, 261 U. S. 290, 293. "The due process clause" of the Fourteenth Amendment does not operate to enforce upon states a uniform code of criminal procedure; and it is for them to choose the methods and practices by which crime is brought to book, *so long as they observe those ultimate dignities of man which the United States Constitution assures.*", *Carter* vs. *Illinois*, 329 U. S. 173. See also *Snyder* vs. *Mass.*, 291 U. S. 173.

This Honorable Court, in the *Wolf* case, found that a basic right was violated in that the evidence was unlawfully seized from him, but, nevertheless, held that it could be used against Wolf at the trial and affirmed the conviction. However, this learned Court likewise held:

> (p. 28) . . . "But the ways of enforcing such a basic right raises questions of a different order. How such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions which are not to be so dogmatically answered as to preclude varying of judgment on issues not susceptible of quantitative solution."

We sincerely submit, that the remedy to enforce such a basic right to check such arbitrary conduct is found in the "Civil Rights Laws" under which petitioners proceeded and consistent in the concept of an ordered liberty. Title 8, U. S. C. A. 43, provides for instituting civil action for *deprivation* of rights by actions at law, suits in equity, or other proper proceedings for redress." Title 28, U. S. C. A. 1343 (3), gives to federal courts original jurisdiction, to "redress the deprivation of any right, privilege, or immunity secured by the Constitution of the United States." An injunction proceeding is a suit in equity, *Hague* vs. *C. I. O.*, 307 U. S. 496; *Douglas* vs. *Jeannette*, 319 U. S. 157, and the foregoing "Civil Rights Laws" are discussed in

these opinions, at length. These congressional enactments are the answer, we humbly repeat, to overcome and settle the "incursions into privacy" so strongly condemned in the *Wolf* case, *supra*, and in many decisions of this Honorable Court, the citation of which would now be seemingly superfluous.

Parallel, and with the recognition by this Honorable Court, that unreasonable searches and seizures by State police officers is in violation of due process (*Wolf* case) are the "coerced confession cases". We respectfully submit for consideration the most recent decisions relating to the admissibility in State cases of confessions alleged to have been obtained by State police officers under circumstances amounting to coercion, viz.: *Watts* vs. *Indiana*, 338 U. S. 49; *Turner* vs. *Pennsylvania*, 338 U. S. 62; *Harris* vs. *So. Carolina*, 338 U. S. 68, and *Williams* vs. *U. S.*, No. 365, October term, 1950, decided April 23rd, 1951. These cases represent an extension of a long line of cases requiring as a matter of due process, the exclusion of coerced confessions. In all of these cases the decision turned on determining whether the police activities in the circumstances of each of the cases amounted to coercion and the involuntary admission of the commission of a crime the police were investigating. Having resolved this issue in the affirmative, this Honorable Court held that "due process barred the admission in evidence of the confessions so obtained." These cases through the Fourteenth Amendment emphatically applied the Fifth Amendment.

In the foregoing "confession cases" a firm rule of exclusion was made the law of the land, to the end that "coerced confessions obtained by local police officers" are not admissible in evidence against the accused, and therefore shall be excluded. In the *Wolf* case, this Honorable Court held that the federal exclusionary rule is a judicially created rule of

evidence under the Fourth Amendment, but of itself, did not bar the use in evidence of what the Fourth Amendment condemned.

And, this Honorable Court through the Fourteenth Amendment literally and emphatically applied the First Amendment to the States in its very terms. *Everson* vs. *Board of Education*, 330 U. S. 1; *West Virginia State Board of Education* vs. *Barnette*, 319 U. S. 624, 639; *Bridges* vs. *California*, 314 U. S. 252, 268; *Hague* vs. *C. I. O.*, 307 U. S. 496, and many others.

This Honorable Court through the Fourteenth Amendment has granted the rights, privileges, and immunities secured under the First and Fifth Amendments to the end that there would be equality in the "*concept of ordered liberty*" for all of the people. The Fourth Amendment is of equal importance in the uniform administration of justice: Congress has legislated the means whereby rights, privileges and immunities may be redressed by the enactment of the "Civil Rights Laws".

The Fourth Amendment is as equally applicable to the States as are the First and Fifth Amendments and there should be no distinction made in the application of the Fourth Amendment to the States, and more particularly to the respondents at bar.

If the "coerced confessions" should not be admitted in evidence then the fruits of an unlawful and unreasonable search and seizure should be likewise excluded by injunction and suppression proceedings.

With permission, respectfully, we adopt and quote and urge the eloquent language of Mr. Justice Black, in *Wolf* vs. *Colorado*, 338 U. S. 25, viz.:

> (P. 40) It is not amiss to repeat my belief that the Fourteenth Amendment was intended to make the

> Fourth Amendment in its entirety applicable to the States. The Fourth Amendment was designed to protect people against unrestrained searches and seizures by Sheriffs, policemen, and other law enforcement officers. Such protection is essential in a free society. And I am unable to agree that the protection of the people from over-zealous or ruthless state officers is any less essential in a country of "ordered liberty" than is the protection of people from overzealous or ruthless federal officers. Certainly there are far more state than federal enforcement officers and their activities, up to now, have more frequently and intimately touched the daily lives of people than have the activities of federal officers. A state officers "knock at the door . . . as a preclude to a search without authority of law", may be as our experience shows, just as ominous to "ordered liberty" as though the knock were made by federal officers.

The facts at bar, unequivocally, admit that the searches and seizures complained of by petitioners, are in violation of their constitutional rights under the Fourth Amendment. That the fruits thereof *will be used* at the trial of the criminal charges now pending against the petitioners has been admitted by the respondents. That the fruits of the searches and seizures are admissible in evidence under New Jersey Law is likewise conceded by all of the parties to this certiorari.

Petitioners have no adequate remedy in the State Courts of New Jersey, and the only protection of their sacred, fundamental and basic rights can only be preserved by means of the relief prayed for under the proceedings instituted by them in the District Court as sanctioned and permitted by the "Civil Rights Laws", *supra*.

POINT II.

Petitioners' suits in equity should not have been dismissed.

The learned District Court erred in dismissing the complaints. The complaints should not have been dismissed so long as facts alleged therein are sufficient to establish a claim to any relief in equity, and, whether or not the pleader is entitled to the relief which he prays.

Keiser vs. *Walsh*, 118 Fed. (2) 13, 14, holds:

> "We need not consider whether appellant has asked for proper relief. By rule 54 (c) of the Federal Rules of Civil Procedure . . . 'every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.' Accordingly, a complaint is sufficient if it sets forth facts which show that the plaintiff is entitled to any relief which the court can grant."

Ware vs. *Travelers Ins. Co.*, 150 F. (2) 463, 405, holds:

> "The fact that the plaintiff may not be entitled to all the relief sought does not warrant dismissal of the entire suit * * * under existing rules of pleading a complaint is not to be turned away unless on the facts pleaded he is entitled to no relief."

Bell vs. *Hood*, 327 U. S. 678, 684, our United States Supreme Court held, viz.:

> "* * * It is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Moreover, where federally protected rights have

been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides *for* a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." (Italics ours.)

In accordance with the obligation of the Federal Courts to "use any available remedy to make good the wrong done (*Bell* v. *Hood*)", and in contrast with the finding of the learned trial court in dismissing the complaints at bar, this Honorable Court should conclude that it was error to dismiss the complaints and to deny the injunctive relief sought because of any inability which may be thought to exist to enjoin the respondents, particularly since petitioners are primarily interested in preserving constitutional rights.

The trial court in holding that state remedies should be first exhausted by petitioners may have had in mind rules of comity. But, as "Rules of comity or convenience must give way to constitutional rights" (*Oklahoma Natural Gas Co.* vs. *Russell*, 261 U. S. 290, 293, the plain language and purpose of the Civil Rights Laws is to clothe the Federal Courts with power to protect constitutional rights and see that the rights, privileges, and immunities thereunder are *equally* enforced. Moreover the legislative history of Title 8, U. S. C. A., Section 43, demonstrates that it was the purpose of Congress to supply an original equitable remedy in Federal Courts irrespective of any other remedies which might exist in the State tribunals (See 44 C. R. 361, 365, 373, 416, 429, 449, 459, 476, 485, 501, 502, 609, 653, etc.) For this reason it has been held that there is no need to exhaust available State remedies as a condition to instituting an action under Section 43, *Hague* vs. *CIO*, 307 U. S. 496, 532.

In *Mass. State Grange* vs. *Benton*, 272 U. S. 525, this Honorable Court said:

> "No injunction ought to issue against officers of a State clothed with authority to enforce the law in question, *unless a case reasonably free from doubt and when necessary to prevent great and irreparable injury.*" (Italics supplied.)

The facts charged in the petitioners' respective complaints are clear. The affidavits of each petitioner was annexed to the respective complaints (Stefanelli, R. 6, 7, and Malanga, *et als.*, R. 19, 20). Each of the complaints charged a breaking into the premises by local police officers without their consents (Stefanelli, R. 3, and Malanga, *et als.*, R. 16); that without their consent, acquiescence and approval a search was made and papers, paraphernalia and other things, being their property was seized (Stefanelli, R. 3, and Malanga, *et als.*, R. 16); that the fruits of the search and seizure will be used by respondents on criminal charges involving the violation of New Jersey criminal laws relating to bookmaking (Stefanelli, R. 4, and Malanga, *et als.*, R. 17); that irreparable harm and injury would be caused petitioners by the use of the seized evidence (Stefanelli, R. 4, and Malanga, *et als.*, R. 17); that petitioners have no adequate remedy in the New Jersey State Courts (Stefanelli, R. 4, and Malanga, *et als.*, R. 18) and the respective complaints further alleged that the equity proceedings were brought in the District Court which had original jurisdiction by virtue of Title 28, U. S. C. A., 1343 (3) and Title 8, U. S. C. A., Section 43.

The Agreed Statement of Facts entered into between all of the parties made it abundantly clear that the searches and seizures were made without a warrant of arrest or a search warrant. Also, that the seized evidence was admis-

sible in evidence against petitioners because under New Jersey law, it was evidential *per se*. Respondents admit that the entry into petitioners' respective premises was made without their consent and approval and that the seized evidence *will* be used in the criminal trials of petitioners upon their indictments. These admissions amplify the fact that the complaints in equity set forth a cause of action cognizable in the Federal Courts. The pleadings and the Agreed Statement of Facts, set forth a cause of action free from doubt and clearly showed the obvious irreparable injury to petitioners.

In *Wolf* vs. *Colorado,* a reversal of a conviction was sought because of the violation of a right under the Fourth Amendment and of the Fourteenth Amendment. If Wolf had proceeded by means of the Civil Rights Laws, such as we have, perhaps the final determination by this Honorable Court would have been different. Wolf knew in advance that the evidence he complains of would be used against him. He knew, too, the state of the law in Colorado, which State had rejected the Weeks' doctrine, as has New Jersey.

The language of Mr. Justice Frankfurter clearly implies that there must be some effective remedy against the police "incursions into privacy". We humbly submit that the means to make secure against the intrusions complained of is amply supplied by the Civil Rights Laws, by which petitioners have proceeded to preserve their rights.

The people of these United States have a serious situation confronting them. The Constitution of the United States is the law of the land. Is unlawful and unreasonable search and seizure to be sanctioned and approved by State Courts in direct contravention of the basic and fundamental rights guaranteed to all under the United States Constitution? The security of any person is in jeopardy

and in a land where we seek equality in the enforcement of all laws, and which all of us are bound to obey the law of the State as well as the United States, the enforcement of the Constitutional Amendments, *should be equally interpreted,* whether State or Federal, and thereby insure a well ordered and free society. Federal officers enforce Federal laws and State Officers enforce Municipal and State Laws. In the enforcement of these laws, is it to be said that if Federal Officers pursue the same course of conduct as was pursued in the case at bar by State Officers, by similar conduct the Federal Officers would be restrained; and, in State prosecutions the State Police Officers are apparently condoned when violating the same basic and fundamental rights of security as provided under the Fourth Amendment to the United States Constitution.

As was held in *Snyder* vs. *Mass.*, 291 U. S. 97 and *Carter* vs. *Illinois*, 329 U. S. 173, it is reserved to the States to have a uniform code of criminal procedure and free to regulate the procedure of its courts, but in so doing, *"those ultimate dignities of man which the United States Constitution"* assures, is observed; and in so doing, "there is no offense of some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

We have explained under Point I our position that the Civil Rights Laws under which petitioners have proceeded are protective of the situation about which we complain. The *Wolf* decision should not be held as the law of the land because the question raised does not dispose of the proposition where irreparable damage and injury is involved.

Judicial decisions are law and are just as effective, if not more so, as are legislative enactments. While the law of search and seizure has been referred to frequently "as a rule of exclusion", nevertheless, the full import and effect

of such a rule is that it fully prescribes and determines the security of one's person, liberty and property.

Title 28, U. S. C. A., 1343 (3), grants District Courts original jurisdiction to "redress the deprivation, under color of State law . . . of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for EQUAL rights of citizens or persons . . ." (Emphasis supplied).

The equality of rights in this Statute, creates no barrier between, what a federal officer may or may not do, or what a State police officer may or may not do. We submit, that the very object of this statute was to protect the people against the conduct of the States, police officers, Sheriffs, etc., wherein federally protected rights would not be transgressed, because State policy in bringing crime to book might be considered paramount to the Constitution of the United States.

As we have pointed out under Point I of this Brief, the Courts of the State of New Jersey, have sanctioned violations of the Fourth Amendment by the police officers by holding that the first ten amendments of the Constitution of the United States are limitation upon Federal but not State powers, *State* vs. *Giberson*, 99 N. J. Law 85, 87. Further, the prohibition against unreasonable searches and seizures in the Federal and New Jersey Constitution are no protection in State cases, *State* vs. *Mac Queen*, 69 New Jersey Law 522, 527 and other cited cases.

The admissibility of the fruits of the unlawful and unreasonable searches and seizures against petitioners, being affirmatively sanctioned by New Jersey Courts, runs counter to the guaranty of the Fourteenth Amendment (*Wolf* vs. *Colorado*, 335 U. S. 25, 28).

Conclusion.

We respectfully submit that the petitioners are entitled to the relief which they seek. We have shown and it is agreed that the evidence unlawfully taken from the petitioners will be used in evidence against them. We have shown that this evidence will be used in criminal proceedings thereby causing irreparable and immediate damage and danger to the petitioners. There has been no showing by the respondents that petitioners would not be irreparably damaged by the use of the fruits of the searches and seizures involved according to our Agreed Statement of Facts.

We have shown that the relief which we seek, by all of the cited authorities, is the vested right of the petitioners. The very nature of and the acts and course of conduct pursued by the respondents and the admitted intention to use the fruits of an unlawful and unreasonable search and seizure from their respective premises, *requires* the relief we seek.

We, therefore, respectfully submit that this Honorable Court should have the complaints reinstated and the trial court directed to make an order suppressing the evidence unlawfully and unreasonably taken from the petitioners and that the respondents be enjoined from the use of said evidence at any trial or hearing and to grant petitioners all of the prayers of the complaints, respectively.

And we further respectfully urge that by the decision of this Honorable Court that the District Court be directed to enter such order, judgment or decree as shall be uniformly just in the equal administration of justice in conformity with the spirit and intent of the Constitution and the Civil Rights Laws.

Respectfully submitted,

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Attorney for Petitioners.